

M e m o r a n d u m**425.0330**

To: Out-of-State Auditing

January 13, 1986

From: Legal
(Robert J. Stipe)

Subject: U. S. S--- Corporation

SS --- XX-XXXXXX

This is in response to your memorandum of November 6, 1985 in which you attach a memorandum dated November 1, 1985 from New York auditing.

The New York audit staff has requested an opinion concerning the correct application of tax to the following surgical instruments:

- 1) Surgiclip disposable clip applier, model M-9.5 and M-11. These instruments contain 20 preloaded stainless steel clips, and both clip cartridge and applier are sold together as one disposable unit. The application of the instrument is to provide hemostasis and occlude tissue structures in a wide variety of surgical procedures.
- 2) Poly Surgiclip disposable automatic clip applier, models SPS-20, MPS-20 and LPS-20. These instruments contain an integral cartridge containing 15 or 20 absorbable copolymer ligating clips, and together with the applier are sold as one disposable unit. This instrument has applications in many types of surgical procedures where an absorbable or radio-transparent ligature is indicated or desired.
- 3) Clip-A-Matic disposable automatic clip applier, Model 132853 and 132838. This instrument contains an integral cartridge containing 8 or 20 stainless steel clips, and are sold together with applier as one disposable unit. This instrument has applications in many types of surgical procedures to occlude vessels and other tubular structures and for vagotomy, sympathectomy, and radiographic markings.

Specifically, New York Auditing is requesting an opinion as to whether the sale of any of the above disposable surgical instruments should be exempt from tax as the sale of medicines under Sales and Use Tax Regulation 1591.

Regulation 1591(c)(3) excludes from the term medicines articles which are in the nature of instruments, apparatuses, contrivances, appliances, devices or other mechanical or physical pieces of equipment.

We are of the opinion that the instruments described in (1) and (3) above are in the nature of surgical appliances or devices since they are primarily used for procedures such as cutting (vagotomy, sympathectomy) or stopping the flow of blood (hemostatis) and as such would be excluded from the term "medicine" pursuant to Regulation 1591(c)(3). Therefore, the sale of the instruments described in (1) and (3) above are subject to tax.

Regulation 1591(b)(2) provides that the term medicine includes "sutures". We have held in the past that "sutures" means those items such as silk, thread, wire or catgut used in the surgical uniting of two pieces of skin. We have also held in the past that disposable loading units as well as the disposable instruments and loading units (when sold together) that are used to join skin tissue qualify as "sutures" under Regulation 1591(b)(2).

The instrument described in (2) above is used to bind (ligate) vessels or body tissue with an absorbable substance similar to thread. Therefore, we are of the opinion that the instrument in (2) above is a type of "suture" and would be included within the term "medicine" pursuant to Regulation 1591(b)(2). As such, the sale of this instrument is not subject to tax.

If you have any further questions concerning this matter, we will be happy to discuss them with you.

RJS:sr